

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

M CORP DBA 11:59,	:	
	:	
Plaintiff,	:	Civil Action No. 1:24-cv-1823
	:	RDA-IDD
v.	:	
	:	
INFINITIVE, INC., JOSEPH BRADLEY SHERIDAN, DATABRICKS INC., WILLIAM McKINNEY, CHERYL MILES, AND DOES 1-25, INCLUSIVE	:	
	:	
Defendants.	:	

STIPULATED PROTECTIVE ORDER

Whereas, to expedite the exchange of Discovery Material in this litigation, to facilitate the prompt resolution of disputes over confidentiality, to protect Discovery Material entitled to be kept confidential, to promote communication between counsel, and pursuant to this Court’s authority under Rule 26(c) of the Federal Rules of Civil Procedure to enter a protective order limiting disclosure of certain documents and information, it is hereby

ORDERED that this Stipulated Protective Order (“Protective Order”) shall govern the handling of documents, testimony, depositions, deposition exhibits, interrogatory responses, admissions, voluntary disclosures, and any other information in any format produced or given by any party to any other party in this action, including any appeals therefrom or any alternative dispute resolution proceedings related thereto (“Litigation”), in connection with this Litigation (such information, as further described below, shall be referred to as “Discovery Material”):

I. PURPOSES AND LIMITATIONS

The parties recognize and acknowledge that the proceedings in this Litigation may require the disclosure and production of information and documents of a confidential nature.

The parties intend this Protective Order to expedite the flow of Discovery Material, to facilitate the prompt resolution of disputes over confidentiality of Discovery Material, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonably necessary uses of such material in preparation for and in conduct of trial in accordance with this Protective Order.

Therefore, consistent with Local Civil Rule 5(G), the parties agree to restrict access to Discovery Material. *See* Local Civil Rule 5(G) (“Nothing in this Local Civil Rule limits the ability of the parties, by agreement, to restrict access to documents which are not filed with the Court.”).

The parties acknowledge, however, that this Protective Order does not confer blanket protections on all Discovery Material. Rather, the protections afforded by this Protective Order with respect to Discovery Material that is filed with the Court extend only to the limited information or items that are entitled to protection under the applicable legal principles.

II. DEFINITIONS

2.1 “Party” means any party to this Litigation, including all its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 “Discovery Material” means all documents, items, or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated by a Party or non-party in disclosures or voluntarily or in responses to discovery in this matter. The term “documents,” as used in this

Order, has the meaning ascribed to it in Rule 34 of the Federal Rules of Civil Procedure, and includes electronically stored information.

2.3 “Protected Discovery Material” means any Discovery Material designated as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” in good faith (a) at the time of producing or disclosing them in this Litigation, (b) at a later time consistent with this Protective Order, or (c) as otherwise provided for by agreement of the Parties or order of the Court. A Designating Party may designate any Discovery Material as “CONFIDENTIAL” to the extent it contains any proprietary, trade secret, and/or commercial information, medical information, OR Sensitive Financial Information (as defined below) that the Producing Party would not customarily release and has not released to the public. A Designating Party Designate any Discovery Material as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” when the Discovery Material meets the requirement for a “CONFIDENTIAL” designation and is so sensitive that if disclosed would cause substantial competitive harm to the Producing Party.

The following shall not be considered Protected Discovery Material: (a) any Discovery Material that at the time of disclosure to a Receiving Party is lawfully in the public domain and (b) any Discovery Material that, after its disclosure to a Receiving Party, lawfully becomes part of the public domain as a result of publication not involving a violation of this Protective Order or any protective order entered by a court of competent jurisdiction.

2.4 “Sensitive Financial Information” means Discovery Material that contains a Person’s bank or other financial account number, Social Security Number, Employer Identification Number, Individual Taxpayer Identification Number, year of birth, return or return information as defined by 26 U.S.C. § 6103(b), or any other personally identifying information.

2.5 “Attorneys” shall mean a Party’s outside counsel retained for purposes of representing such party in this Litigation and shall NOT include an attorney who is employed by or otherwise may be deemed an “in-house” counsel as that term is generally understood.

2.6 “Person” shall mean and include an individual, a trust, estate, partnership, association, company or corporation.

2.7 “Receiving Party” means a Party that receives Discovery Material from a Producing Party.

2.8 “Producing Party” means a Party or non-party that produces Discovery Material in this Litigation.

2.9 “Designating Party” means a Party or non-party that designates information or items that it produces in discovery or in responses to discovery as Protected Discovery Material.

III. DESIGNATING PROTECTED DISCOVERY MATERIALS

3.1 Exercise of Restraint and Care in Designating Material for Protection. A Designating Party must take care and act in good faith to limit any protective designation only to specific materials that qualify under the appropriate standards. A Designating Party must take care to designate for protection beyond that conferred on all Discovery Material only those parts of materials, documents, items, or oral or written communications that qualify—so that other portions of the materials, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of Protected Discovery Material as set forth in this Protective Order. Mass, indiscriminate, or routine designations are prohibited. A Designating Party must have a good-faith basis for using the “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” designation. Designations that are shown to be clearly unjustified and made in bad faith, or that have been made for an improper purpose (*e.g.*, to unnecessarily

encumber or delay the case development process, or to impose unnecessary expenses and burdens on other Parties), may expose the Designating Party to sanctions. If it comes to a Party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

3.2 Manner and Timing of Designations. Except as otherwise provided in this Protective Order, or as otherwise stipulated or ordered, Discovery Material that qualifies for additional protection under this Protective Order must be so designated either (a) before the material is disclosed or produced or (b) in a timely fashion consistent with this Protective Order but no later than the close of discovery. Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the appropriate legend—*i.e.*, “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”—on each page that contains Protected Discovery Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins);

(b) for information in native format, that the Producing Party affix the appropriate legend—*i.e.*, “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”—in the filename, if practicable, and, if not practicable, the Producing Party shall provide the Receiving Party an index identifying the native files so designated;

(c) for testimony given in deposition or in other pretrial or trial proceedings, that the Party offering or sponsoring the testimony identify on the record, at the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that

qualify as Protected Discovery Material. Transcript pages containing Protected Discovery Material must be separately bound by the court reporter, who must affix to each such page the appropriate legend—*i.e.*, “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”—as instructed by the Party offering or sponsoring the witness or presenting the testimony; and

(d) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the appropriate legend—*i.e.*, “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions.

IV. CHALLENGING PROTECTED DESIGNATIONS

4.1 If counsel for any Party, in good faith, disputes the designation of any document, information or materials, he shall notify the Producing Party in writing. Within 10 days of the written challenge, the Producing Party and party challenging the designation shall meet and confer and attempt to agree on a resolution of the dispute. If the parties are unable to resolve the dispute by consent, within 10 days of the parties reaching an impasse, the Producing Party shall either revoke the designation or apply to the Court for a determination that the document, information or material is protected and set that motion for the earliest available hearing date. Until a final determination by the Court, any disputed document, information or material will be treated as Confidential pursuant to this Protective Order. Should the Producing Party fail to either revoke the challenged designation or apply to the Court for a determination regarding the challenged designation within the latter 10 day period, the challenged designation will be considered revoked.

V. ACCESS TO AND USE OF DISCOVERY MATERIALS

5.1 Disclosure of Discovery Material or Items. Unless otherwise ordered by the Court or permitted in writing by the Producing Party, any Protected Discovery Material produced by any Party is exclusively limited to use in the present Litigation, and may not be used in any other judicial, administrative, or arbitration proceeding, as well as any proceedings that the Parties may enter into in the future. Without submitting to the further procedures set forth herein, a Party may place on the public record of the Court in connection with this Litigation any Discovery Material not designated Protected Discovery Material, provided that the Party has a good-faith basis for using the Discovery Material in a court filing or in open court.

5.2 Disclosure of Discovery Material. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose Protected Discovery Material, only to:

- (a) the Receiving Party;
- (b) the Receiving Party's outside counsel of record in this Litigation, as well as employees of said counsel to whom it is reasonably necessary to disclose the information for this Litigation;
- (c) experts and consultants retained in connection with this Litigation;
- (d) the Court, Court personnel, or court reporters (with respect to Protected Discovery Material, only in accordance with the procedures set forth below);
- (e) professional vendors utilized in connection with this Litigation;
- (f) witnesses or potential witnesses in this Litigation;
- (g) the author and/or recipient of the document or the original source of the information;

(h) such other Persons as hereafter may be designated by written agreement of the Parties or by order of the Court.

5.3 Disclosure of “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” Discovery Materials. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, Protected Discovery Material designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” shall be available only to:

(a) the Receiving Party’s outside counsel of record in this Litigation, as well as employees of said counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) experts and consultants retained in connection with this Litigation for the purposes of drafting expert reports or testifying;

(c) the Court, Court personnel, or court reporters (with respect to Protected Discovery Material, only in accordance with the procedures set forth below);

(d) professional vendors utilized in connection with this Litigation for the purposes of forensic discovery or electronic discovery;

(e) the author and/or recipient of the document or the original source of the information;

(f) such other Persons as hereafter may be designated by written agreement of the Parties or by order of the Court.

Unless and until agreed to in writing by the Producing Party or Designating Party, Protected Discovery Material designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” may not be disclosed to, nor the contents of any such material discussed with, any Party or employee of

any Party or any witness or potential witness, as identified in Paragraph 5.2(a) or Paragraph 5.2(f) above.

To the extent the counsel for the Parties agree that a Receiving Party or employee of a Receiving Party must be made aware of the contents of Protected Discovery Material designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” for purposes of participating in the litigation or complying with any Order of the Court, the Parties shall meet and confer and agree upon a designated employee of the Receiving Party who may be made aware of same. Such a designated person must execute an agreement to be bound by the terms of this Protective Order.

5.4 Inadvertent or unintentional production of documents or things that the Producing Party failed to designate as Protected Discovery Material at the time of production shall not be deemed a waiver in whole or in part of a claim for such treatment. After discovery of the error, the Designating Party shall notify the Receiving Party promptly in writing and provide replacement materials with the appropriate legend affixed (*i.e.*, “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).

5.5 Subject to the provisions of this Protective Order, Discovery Material may be used by the Parties at any deposition, conference or hearing. Discovery Material designated as Protected Discovery Material that is identified as an exhibit in connection with testimony given in such proceedings shall be marked as such. When Protected Discovery Material is used at a deposition, conference, or hearing, counsel for the Party that produced the underlying Discovery Material may indicate that any testimony pertaining to the Protected Discovery Material also should be treated as Protected Discovery Material. Such designation may be made at the time of the testimony by making a record of the specific testimony that is being designated as Protected Discovery Material or within a reasonable time after receiving a transcript of the deposition or hearing. Arrangements

shall be made with the court reporter taking and transcribing such proceeding to separately bind such portions of the transcripts containing Protected Discovery Material. Absent a Court order to the contrary, nothing in this Protective Order shall be construed to limit the use of Discovery Material, other than Protected Discovery Material, in open Court.

VI. THIRD-PARTY SUBPOENAS, REQUESTS, AND ORDERS FOR DOCUMENTS

If another court, administrative agency, or third-party orders, subpoenas, or requests production of Discovery Material that has been produced pursuant to this Protective Order, the Receiving Party must notify the Producing Party, in writing (by email, if possible) immediately and in no event more than three (3) court days after receiving the subpoena or order. Such notification must include a copy of the subpoena, request, or court order. The Producing Party shall bear the burdens and the expenses of seeking protection in the appropriate court of its Discovery Material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

VII. UNAUTHORIZED DISCLOSURE OF DISCOVERY MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Discovery Material to any Person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Producing Party of the unauthorized disclosure, (b) use its best efforts to retrieve all copies of the Discovery Material, and (c) inform the Person or Persons to whom unauthorized disclosure was made of all the terms of this Protective Order.

VIII. FILING PROTECTED DISCOVERY MATERIAL

If a party intends to file any Protected Discovery Material with the Court, it shall notify the Producing Party of that Material in advance of the filing. Thereafter, the parties shall confer

pursuant to Local Civil Rule 7 regarding whether the designation can be withdrawn, or other appropriate steps to eliminate or minimize the risk of disclosure. To the extent designated Protected Discovery Material must still be filed, the Producing Party shall draft the Motion and Memorandum under Local Civile Rule 5 for filing under seal.

IX. FINAL DISPOSITION

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) days after the final termination of this Litigation, each Receiving Party must destroy, or return to the Producing Party, all Discovery Material. As used in this subdivision, “all Discovery Material” includes all copies, abstracts, compilations, summaries, or any other form of reproducing or capturing any of the Discovery Material. Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain Discovery Material. Any such archival copies that contain or constitute Discovery Material remain subject to this Protective Order. Upon final resolution of this Litigation, any Discovery Material filed with the Court will be subject to disposition at the direction of the Court.

X. MISCELLANEOUS

10.1 Right to Further Relief. Nothing in this Protective Order abridges the right of any Person to seek appropriate relief from the Court in the future.

10.2 Right to Assert Other Objections. By agreeing to this Protective Order, a Party does not waive any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, a Party does not waive any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

10.3 Right to Use Information Lawfully Obtained from Another Source. Nothing in this Protective Order precludes any Party, its attorneys, or another Person from disclosing or using, in any manner or for any purpose, any information or documents not obtained in discovery in this Litigation, if such information is lawfully obtained from another source, such as a third party having the right to disclose such information, even though the same information or documents may have been produced in discovery in this Litigation and/or designated as Protected Discovery Material.

10.4 Right to Use Upon Consent or Order. Nothing herein prevents disclosure beyond the terms of this Protective Order, if the Designating Party consents in writing to such disclosure or if a court of competent jurisdiction, after notice to all affected Parties, orders such disclosure.

10.5 Inadvertent Disclosure of Privileged/Work Product Materials. The inadvertent production of documents that are subject to a claim of attorney-client privilege, work product immunity, or other applicable privilege shall be governed by Rule 26(b)(5)(B) of the Federal Rules of Civil Procedure, as amended on December 1, 2018, and Federal Rule of Evidence 502(d). If the information subject to a claim of privilege is produced, that production will in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege for that information. The Receiving Party may move the Court for an order compelling production of that information pursuant to Rule 26(b)(5)(B), but the Receiving Party will not assert that the inadvertent production constitutes a waiver of any subsequently asserted privilege.

10.6 Third-Party Productions. Discovery Material or testimony produced by any third party voluntarily or as a result of a subpoena served by a Party shall be treated in accordance with the terms and conditions of this Protective Order. Should the third party elect to invoke the terms of this Protective Order, it must agree to abide by the terms and conditions of the Protective Order.

A third party's use of this Protective Order to designate Discovery Material as Protected Discovery Material does not entitle the third party to access Discovery Material produced by any Party in this Litigation.

10.7 Producing Party's Right to Use Its Own Materials. Nothing contained herein shall prevent any Party from disclosing its own Discovery Materials, including Protected Discovery Materials, as it deems appropriate, and any disclosure by a Party of its own Discovery Materials shall not be a waiver of the provisions contained herein; provided, however, that if a Designating Party publicly files its own Protected Discovery Materials in this case, the Receiving Party may likewise publicly file such Protected Discovery Materials in this case.

10.8 Sharing with Another Party. A Party may make Discovery Material available for inspection and copying to any other Party to this action. Discovery Material so shared shall not lose its status as Discovery Material or Protected Discovery Material.

10.9 Further Orders Regarding Confidentiality. Any Party, after good-faith consultation with the other Parties, may apply to the Court for a protective order other than that contemplated by this Protective Order regarding the production and treatment of information designated or believed to be confidential by any Party.

10.10 Jurisdiction. The Parties consent to the jurisdiction of the Court to enforce the terms of this Protective Order, and this Protective Order shall survive the termination of the Litigation, unless modified by order of the Court or by written stipulation of the Parties filed with the Court. This Protective Order is without prejudice to the right of any Party to seek additional protection from the Court to preserve the confidentiality of Discovery Material produced or created in the above-captioned action.

Honorable Ivan D. Davis
United States Magistrate Judge

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